

STATEMENT OF CONSIDERATION RELATING TO
401 KAR 8:100 Amended after comments

Energy and Environment Cabinet
Department for Environmental Protection
Division of Water

I The public hearing on 401 KAR 8:100, scheduled for July 27, 2010, at 5:00 p.m. at 300 Fair Oaks Road, was held and written comments were received during the public comment period.

II The following people attended the hearing:

<u>Name and Title</u>	<u>Affiliation</u>
George Woolwine, Vice President	HDR Engineering, Inc.

The following people submitted comments:

<u>Name and Title</u>	<u>Affiliation</u>
Tom FitzGerald, Director	Kentucky Resources Council

III The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Julie Roney, Drinking Water Program	Division of Water
Abby Powell, Regulations Coordinator	Division of Water
Solitha Dharman, Engineering Supervisor	Division of Water

IV Summary of Comments and Responses for 401 KAR 8:100

(1) Subject Matter: Differentiating between public and semipublic water systems

(a) Comment: Tom FitzGerald (Kentucky Resources Council)

KRC asks that the Division reconsider the exemption of semipublic water treatment systems from the requirements to develop a preliminary engineering report, to demonstrate that the raw water source is within the appropriate contaminant levels, and to have the new or expanded facility be designed or approved by a professional engineer as meeting the standards of 40 CFR 141.5 and of Section 9 of the proposed amended rule. To do less creates a distinct and heightened possibility of the delivery of substandard water to consumers of potable water from semipublic water treatment systems.

There is nothing in the statute that authorizes the agency to lower the bar for review of systems for purification of water for semipublic use, since the statute directs the adoption and enforcement of regulations to assure proper “purification of water for public and semipublic use”.

- (b) **Response:** The Division of Water agrees that it has an obligation to ensure safe potable water for consumers being served by a semipublic water treatment system. A semipublic system is a system that serves fewer than fifteen connections or fewer than twenty-five individuals and serves water fewer than sixty days a year. There are currently 54 semipublic systems in Kentucky. One of these systems purchases water, one system uses surface water with full treatment, and 52 of these systems use groundwater as a source.

Division of Water enforces KRS 224.10-110 for semipublic water systems primarily through 401 KAR 8:150, which requires semi-public systems to use chlorination to disinfect, and analysis of raw water to ensure proposed treatment is sufficient. The agency does not require a lower level of review for engineering plans. The regulation has been amended to clarify that if a semipublic system is proposing engineering work those engineering plans must be prepared and stamped by a professional engineer. Typically, however, a semipublic water system does not require an engineer; the work is typically plumbing and submitted to the Department of Housing and this agency. Requiring the additional engineering report, the preliminary engineering report described in Section 1, would create an unnecessary economic burden on very small systems. The Division assesses the source water for semipublic water systems to ensure that the treatment scheme utilized by a semipublic water system is adequate to treat the source water and to ensure that the source water is reliable and appropriate. That assessment varies; in the case where a semipublic water system utilizes surface water, a full analysis is required. If a groundwater aquifer is used and the Division has the data available to conduct an assessment, the Division does not require additional data. If the Division believes additional data is necessary, the Division commonly collects this data directly. In the case where a semipublic water system utilizes purchased water, the Division relies on Monthly Operating Reports from the source public water system.

(2) **Subject Matter: Drafting Suggestions**

(a) **Comment: Emily Harkenrider (Legislative Research Commission)**

Ms. Harkenrider suggested several technical amendments to 401 KAR 8:100 to comply with the drafting requirements of KRS 13A.

- (b) **Response:** The agency agrees and has made the suggested changes.

V Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

The Division of Water reviewed the comments and, as a result, is amending the administrative regulation as follows:

Page 1

RELATES TO

Line 6

After "224.60-100,", insert "322.020(1), 322.340,".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 10

After "KRS 224.10-110", insert the following:

(2), (3), and (4) require

Delete "requires".

Line 12

After "regulation and control", insert ", including construction and operation,".

Line 18

After "the construction of new", insert ", modified,".

Page 4

Section 2(1)

Lines 19 and 20

After "or modification of", insert the following:

a water treatment plant or a distribution facility

Delete the following:

water treatment plants and distribution facilities

Page 5

Section 2(1)(b)1.

Line 4

After "confirming that", insert "the water system".

Delete "it".

Page 5

Section 2(1)(b)2.b.

Line 14

After "b.", insert "Increased".

Delete "Increase".

Page 5

Section 2(1)(c)

Line 21

After "(c)", insert "1. Engineering".

Lowercase the first letter of "Plans".

After "and specifications", delete the following:

for a public water system

Page 6

Section 2(1)(c)1.

Lines 2 and 3

Delete subparagraph 1. in its entirety.

Page 6

Section 2(1)(c)2.a.

Line 10

After "plans and specifications", delete the comma.

After "or", delete "any".

Page 6

Section 2(1)(c)2.d.

Line 17

After "Application for Small" insert "Groundwater and Semi-Public".

Delete "Drinking Water".

Page 7

Section 2(1)(c)3.

Line 3

After "approved by the", lowercase the first letter of "Cabinet".

Page 7

Section 2(1)(c)4.

Line 9

After "of the public water system,", insert "the public water system's".

Delete "its".

Page 8

Section 2(2)(b)

Line 19

After "to the water", insert "system".

Delete "supplier".

Page 9

Section 3(3)

Line 5

After "the date of", insert "approval".

Delete "approvale".

Page 9

Section 4(3)

Line 16

After "The public water", insert "system".

Delete "supplier".

Page 9

Section 6

Line 21

After "service. The cabinet", insert "shall not".

Delete "may refuse to".

Line 23

After "extension of service", insert "is likely to".
Delete "may".

Page 12

Section 9(1)(d)

Line 10

After "DW-1,", insert "(8/2010)".
Delete "(4/2010)".

Page 12

Section 9(1)(e)

Line 11

After "DW-2,", insert "(8/2010)".
Delete "(4/2010)".

Page 12

Section 9(1)(f)

Line 12

After "Application for Small", insert "Groundwater and Semi-Public".
Delete "Drinking Water".
After "DW-3,", insert "(8/2010)".
Delete "(4/2010)".